

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DWAYNE HARRIS,

Plaintiff,

9:20-CV-1482
(GTS/DJS)

v.

SUPERINTENDENT UHLER, et al.,

Defendants.

APPEARANCES:

DWAYNE HARRIS
13-A-5573
Plaintiff, pro se
Green Haven Correctional Facility
P.O. Box 4000
Stormville, NY 12582

GLENN T. SUDDABY
Chief United States District Judge

DECISION and ORDER

I. INTRODUCTION

On December 3, 2020, Plaintiff Dwayne Harris ("Plaintiff") commenced this action pro se by filing a Complaint and an incomplete In Forma Pauperis Application ("IFP Application"). Dkt. Nos. 1 and 2. On December 4, 2020, the Court issued an Order administratively closing this action due to Plaintiff's failure to comply with the filing fee requirements. Dkt. No. 4 (the "December Order"). Plaintiff was advised that if he desired to pursue this action he must so notify the Court and either (1) pay the filing fee of \$402.00 in full, or (2) submit a completed, signed and properly certified IFP Application within thirty (30) days of the filing date of that Order. *Id.* On December 28, 2020, Plaintiff filed a second IFP Application and an Inmate

Authorization Form. Dkt. Nos. 5 and 6.

II. DISCUSSION

A civil action is commenced in federal district court "by filing a complaint." Fed. R. Civ. P. 3. The filing fees must be paid at the time an action is commenced, unless an IFP Application is submitted to the Court. See 28 U.S.C. §§ 1914(a), 1915(a). The federal statute governing applications to proceed in forma pauperis in federal court, the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915, provides in pertinent part that an IFP Application must be accompanied by "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined." 28 U.S.C. § 1915(a)(2). In accordance with Local Rule 5.1.4 of the Local Rules of Practice for the Northern District of New York ("N.D.N.Y.L.R."), a prisoner seeking in forma pauperis status in a civil action subject to the PLRA may satisfy this requirement by submitting a completed, signed, and certified IFP Application. N.D.N.Y.L.R. 5.1.4(b)(1)(A).¹ Local Rule 5.1.4 further provides that if the prisoner fails to fully comply with the above-described requirements after being informed by Court order of what is required, "the Court shall dismiss the action." N.D.N.Y.L.R. 5.1.4(b)(2)(A).²

¹ A "certified" IFP Application is one on which the Certificate portion at the bottom of page two of the form IFP Application has been completed and signed by an appropriate official at the plaintiff's facility. The Certificate portion of the IFP Application requests information regarding funds and/or securities held on account to the inmate's credit over the preceding six months.

² Upon compliance with the filing fee requirements, the Court must consider Plaintiff's IFP Application in light of the three-strikes provision of 28 U.S.C. § 1915(g) and, if appropriate, review the Complaint in accordance with 28 U.S.C. § 1915(e) and/or 28 U.S.C. § 1915A.

Upon review, the Court finds that the second IFP Application was completed and signed by Plaintiff. See Dkt. No. 5 at 2. The IFP Application however, has not been certified by an appropriate official at Plaintiff's facility nor have copies of Plaintiff's inmate account statements been provided. Plaintiff's IFP Application (Dkt. No. 5) is incomplete and must be denied.

In light of Plaintiff's pro se status, the Court will afford him a **final** opportunity to comply with the filing fee requirements for this action. If Plaintiff fails to timely comply, this action will be dismissed without prejudice without further Order of the Court.

III. CONCLUSION

WHEREFORE, it is hereby

ORDERED that Plaintiff's renewed IFP Application (Dkt. No. 5) is **DENIED as incomplete**; and it is further

ORDERED that plaintiff must, **within thirty (30) days** of the filing date of this Decision and Order, either (1) pay the \$402.00 filing fee in full, or (2) submit an IFP Application which has been completed and signed by him and which has been certified by an appropriate official at his facility;³ and it is further

ORDERED that in the event Plaintiff fails to timely comply with the filing fee requirements set forth in this Decision and Order, this action will be **dismissed without prejudice without further Order of this Court**; and it is further

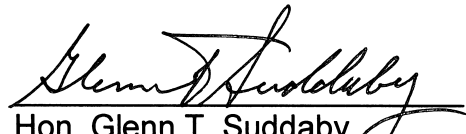
ORDERED that upon Plaintiff's compliance with this Decision and Order, the file shall be returned to the Court for further review; and it is further

³ As noted, certified account statements may be submitted in lieu of the completed certificate portion of the IFP Application. See 28 U.S.C. § 1915(a)(2).

ORDERED that the Clerk shall serve a copy of this Decision and Order on Plaintiff.

The Clerk is directed to send Plaintiff a blank IFP Application; and shall also send Plaintiff a second copy of this Decision and Order, which Plaintiff may provide to the inmate accounts office at his facility along with his request for certification of his completed and signed IFP Application (and/or certified copies of his inmate account statements).

Dated: January 11, 2021


Hon. Glenn T. Suddaby
Chief U.S. District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Plaintiff(s)

v.

**APPLICATION TO PROCEED
WITHOUT FULL PREPAYMENT
OF FEES IN ACTIONS COMMENCED
PURSUANT TO 42 U.S.C. § 1983**

Defendant(s)

CASE NUMBER: _____

I, _____, declare that I am (check appropriate box)

☐ plaintiff/movant

☐ other

in the above-entitled proceeding and that, in support of my request to proceed without prepayment of fees or costs under 28 U.S.C. § 1915, I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? ☐ Yes ☐ No (if “no,” go to Question No. 2)

If “yes,” state the place of your incarceration: _____

Are you employed at the institution? ☐ Yes ☐ No

Do you receive any payment from same? ☐ Yes ☐ No

Notice to Inmates: The Certificate Portion Of This Affidavit Must Be Completed In Accordance With Rule 5.4(b)(1)(A) Of The Local Rules Of Practice For This Court OR You Must Include, Along With This Affidavit, Certified Copies Of Your Inmate Account Statement For The Last Six Months In Accordance With 28 U.S.C. § 1915(a)(2)

2. Are you currently employed? ☐ Yes ☐ No

a. If the answer is “yes,” state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is “no,” state the date of your last employment, the amount of your take-home salary or wages, and the name and address of your last employer.

3. In the past twelve months have you received any money from any of the following sources?

- | | | | |
|----|---|------------------------------|-----------------------------|
| a. | Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. | Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. | Pensions, annuities, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. | Disability or workers compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. | Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| f. | Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If the answer to any of the above is "yes," describe each source of money and state the amount received and what you expect you will continue to receive. (Attach additional pages if necessary.)

4. Do you have any cash, checking, or savings accounts? ☐ Yes ☐ No
If "yes," state the total amount: _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other assets? ☐ Yes ☐ No
If "yes," describe the property and state its value. (Attach additional pages if necessary.)

6. List the person(s) who are dependent on you for support, state your relationship to each person, and indicate how much you contribute to their support. (Attach additional pages if necessary.)

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CERTIFICATE

(To be completed by appropriate official at institution of incarceration)

I certify that the applicant named herein has the sum of \$ _____ on account to his/her credit at (name of institution) _____.

I further certify that the applicant has the following securities to his/her credit: _____.

I further certify that during the past six months the applicant's average balance was \$ _____.

DATE

SIGNATURE OF AUTHORIZED OFFICER